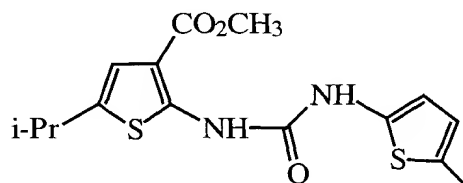


### REMARKS

The only issue outstanding in the Office Action is the double-patenting rejection under 35 U.S.C. § 101. Reconsideration of this rejection is respectfully requested.

It is respectfully submitted that a "same type" double-patenting rejection under 35 U.S.C. § 101 is inappropriate.

The Federal Circuit's predecessor court has held that the same type double-patenting is not present, if it is possible to literally infringe the claims in one patent or application, without infringing the claims of the other. See *In re Vogel*, 164 U.S.P.Q. 619 (CCPA 1970). In the present situation, it is possible to literally infringe the claims of the parent patent, without infringing the current claims. The parent patent recites, in claim 1, 30 species of compounds, whereas present claim 18 recites only 29 species of compounds. Thus, if one of ordinary skill in the art were to make a compound of the formula:



Independent claim 18 of the present application would not be infringed, inasmuch as this material is not encompassed therein. Similar issues apply to all of the remaining claims in the present application, in that all of the parent claims contain additional species. Thus, it is submitted that a same type double-patenting rejection is inappropriate, and withdrawal thereof is respectfully requested.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



---

Harry B. Shubin Reg. No. 32,004  
Attorney for Applicant(s)

MILLEN, WHITE, ZELANO  
& BRANIGAN, P.C.  
Arlington Courthouse Plaza 1, Suite 1400  
2200 Clarendon Boulevard  
Arlington, Virginia 22201  
Telephone: (703) 243-6333  
Facsimile: (703) 243-6410

Attorney Docket No.: BAYER-1 D1

Date: October 11, 2001

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**IN THE SPECIFICATION**

The sentence before the first line of the first paragraph has been amended as follows:

--This is a divisional of application Serial No. 09/083,399 filed May 22, 1998, now  
matured into U.S. Patent 6,178,399, issued February 13, 2001.--